

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
OPPOSITION TO EARLY DISCOVERY**

I. PRELIMINARY FACTS

Prior to the defendants service in this case, the Court issued an Order allowing early discovery for the depositions of Director Will Kempton and District Director Pedro Orso-Delgado. The request for early discovery was based on a since-denied Temporary Restraining Order and withdrawn motion for preliminary injunction. The Order was dated February 20, 2008. Defendants were not served with plaintiff's application for early discovery, so were denied the opportunity to be heard on the matter.

Plaintiff served a new motion for preliminary injunction on defendants on February 25, 2008. Said motion is set to be heard on April 17, 2008. Plaintiffs are demanding the depositions of defendants Will Kempton and Pedro Orso-Delgado be taken place next week. Defendants object to early discovery in connection with the plaintiff's new motion for preliminary injunction.

**II. THERE IS NO SHOWING OF URGENCY JUSTIFYING THE NEED FOR
EARLY DISCOVERY**

Under Fed. R. Civ. Pro., Rule 26, subdivision (d)(1), ordinarily a party may not seek discovery from any source until the parties have conferred. Under Fed. R. Civ. Pro., Rule 26, subdivision (f), there must be a good cause to provide for immediate access to the requested discovery rather than postponing the ultimate production during the normal course of discovery. Stanley v. University of Southern California, 13 F.3d 1313, 1326 (9th Cir. 1994). Plaintiff falls woefully short in showing urgency for early discovery.

Essentially, the court must balance whether there will be irreparable harm to plaintiff should no early discovery be granted against the burdens placed upon the defendants. In its motion for preliminary injunction, plaintiff seeks to have its original location on Interstate 5 reinstated and for defendants to re-erect a courtesy Adopt-A-Highway sign. With the exception

1 of alleging monetary damages, this is exactly what plaintiff requests in its complaint. Plaintiff
2 fails to show any irreparable harm requiring early discovery. Defendants have neither assigned
3 the location of the original Adopt-A-Highway permit to another party, nor revoked plaintiff's
4 permit at all. Plaintiff's Adopt-A-Highway permit has been moved to another location. What is
5 the irreparable harm to plaintiff if it does not receive expedited discovery? Simply, there fails to
6 be any.

7 Plaintiff has requested depositions of Will Kempton, the Director of the State of
8 California, Department of Transportation, commonly referred to as "Caltrans" and Pedro Orso-
9 Delgado, District 11 Director, which covers San Diego and Imperial Counties. Plaintiffs demand
10 that the deposition take place next week in San Diego. Director Kempton lives and works in
11 Sacramento. There are over 20,000 State employees under Director Kempton. Additionally,
12 Director Kempton is responsible for statewide projects that are budgeted into billions of taxpayer
13 dollars. To require Director Kempton to jump on a plane and come to San Diego for a
14 deposition is an unnecessary burden upon the defendants. Similarly, District Director Orso-
15 Delgado has over 800 employees under him and currently is overseeing some of the State's most
16 significant transportation projects on Interstate 15, State Route 125, State Route 905 and State
17 Route 52.

18 19 **III. CONCLUSION**

20 Based on the argument above, the Court should deny plaintiff's application for early
21 discovery.

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23 Dated: March 14, 2008

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